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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,549	07/27/2001	Cherisse Morgan	3052M	8575

7590

03/18/2003

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EXAMINER

EDELL, JOSEPH F

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 03/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,549

Applicant(s)

MORGAN ET AL.

Examiner

Joseph F Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claim 1-11 in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites the limitation "the opposed rail members" in lines 17-18. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 1 recites the limitation "said second upper and lower cushion attachments" in lines 17-18. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 9, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,112,956 to Schick et al in view of U.S. Patent No. 5,624,157 to Kostuk.

Schick et al. disclose a cushion apparatus that is basically the same as that recited in claims 1 and 9, as best understood, except that the apparatus lacks second cushion attachment straps that attach to each other under the lounge chair, as recited in the claims. Figures 1-6 of Schick show a cushion apparatus having an upper body cushion 21 (Fig. 2) with a neck-cushion-reception channel 24a (Fig. 5) and first upper cushion attachment straps 30 (Fig. 2), a flexible hinge 22 (Fig. 2), and a lower body cushion 20 (Fig. 1) with first lower cushion attachment straps (see column 3, lines 20-21). Kostuk shows a cushion apparatus similar to that of Schick et al. wherein the body cushion 11 (Fig. 1) has attachment straps 12,14 (Fig. 3) adapted to affix the body cushion to a lounge chair 20 (Fig. 1) by being employed in pairs attachable to each other underneath the rails of the lounge chair. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cushion apparatus of Schick et al. such that the upper and lower body cushion portions have second upper and lower attachment straps adapted to affix the upper and lower body cushion portions by being employed in pairs attachable to each other underneath the rails of the lounge chair, such as the cushion apparatus disclosed in Kostuk. One

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would have been motivated to make such a modification in view of the suggestion in Kostuk that the attachment straps prevent sagging of the body cushions.

8. Claims 3, 4, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schick et al. in view Kostuk as applied to claims 1 and 9, as best understood above, and further in view of U.S. Patent No. 6,068,342 to Mariani et al.

Schick et al., as modified, disclose a cushion apparatus that includes all the limitations recited in claims 3, 4, 10, and 11 except the neck-cushion-reception channel lacks a neck cushion and a recliner chair frame assembly with an auxiliary frame member, as recited in the claims. Mariani et al. show a cushion apparatus similar to that of Schick et al. wherein the upper body cushion 100 (Fig. 1) has a neck-cushion-reception channel 120 (Fig. 1) with a neck cushion 202 (Fig. 2) having a bottom cushion portion and a top cushion portion, as well as a recliner chair frame assembly having legs 408 (Fig. 4), a lower frame member 504 (Fig. 5) with connection straps 508 (Fig. 5), frame orientation assemblies 510 (Fig. 5), an upper frame member 502 (Fig. 5) with connection straps 506 (Fig. 5), and an auxiliary frame member 136 (Fig. 2) with a beverage holder (see column 4, lines 26-28). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the cushion apparatus of Schick et al. such that the neck-cushion-reception channel has a neck cushion with top and bottom cushions as well as have a recliner chair frame assembly having lower and upper frame members with connection straps, frame orientation assemblies, and an auxiliary frame member with a beverage holder, such as the cushion apparatus disclosed in Mariani et al. One would have been motivated to

make such a modification in view of the suggestion in Mariani et al. that the neck cushion provides head support.

9. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schick et al. in view Kostuk as applied to claims 1 and 9, as best understood above, and further in view of U.S. Patent No. 5,237,713 to Prager.

Schick et al., as modified, disclose a cushion apparatus that includes all the limitations recited in claims 6-8 except the cushion lacks a cylindrical lumbar cushion attached via hook-or-loop connectors, as recited in the claims. Prager shows a cushion apparatus similar to that of Schick et al. wherein the cushion apparatus has a cylindrical lumbar cushion 42 (Fig. 1) attached by hook-or-loop connectors 64,66 (Fig. 1).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the cushion apparatus of Schick et al. such that the apparatus has a cylindrical lumbar cushion attached by hook-or-loop connectors and a recliner chair assembly. One would have been motivated to make such a modification in view of the suggestion in Prager that the adjustable lumbar cushion on the recliner chair allows for lower back support for any user.

Response to Arguments

10. Applicant's arguments with respect to claims 1, 3, 4, and 6-11 have been considered but are moot in view of the new grounds of rejection.

Conclusion


11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

JE
March 11, 2003


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600